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AGREEMENT BETWEEN CITY OF FRESNO AND FRESNO CONVENTION & VISITORS
BUREAU FOR IMPLEMENTATION OF MANAGEMENT DISTRICT PLAN

(Fresno-Clovis Tourism Business Improvement District)

This Agreement is entered on June 7, 2011 between the CITY OF FRESNO, a municipal corporation of the State of California ("City"), and the FRESNO CONVENTION & VISITORS BUREAU, a nonprofit corporation ("Organization").

WHEREAS, the Property and Business Improvement District Law of 1994, (California Streets and Highway Code Section 36600 et seq.) (the "PBID Law") authorizes the City of Fresno to form a property and business improvement district within the City of Fresno; and

WHEREAS, on October 28, 2010, the City approved Resolution No. 2010-234 Declaring its intention to establish the Fresno-Clovis Tourism Business Improvement District ("FCTBID"); and

WHEREAS, on November 8, 2010, the City of Clovis City Council approved a resolution consenting to the establishment of the FCTBID, which encompasses the City of Clovis, as provided by the PBID Law; and

WHEREAS, on December 16, 2010, the City Council held a public hearing regarding the establishment of the FCTBID and the levy of the assessment, and at the conclusion of the hearing determined that a majority protest against the proposed FCTBID assessment did not exist, whereupon the City Council adopted Resolution No. 2010-295, which is incorporated herein by reference, establishing the FCTBID for a five year term expiring on December 31, 2015; and

WHEREAS, the Resolution No. 2010-295 adopted the Fresno-Clovis Tourism Business Improvement District Management District Plan ("Management Plan"), which is attached hereto as **Exhibit A**, variously describes the businesses within the exterior boundaries of the FCTBID to be assessed and benefitted, the method and amount of assessment, and the activities and improvements to be funded by the assessment; and

WHEREAS, the Management Plan indicates that the Organization will provide the activities and any improvements described in the Management Plan and otherwise be charged with managing the FCTBID's day-to-day operations including determining budgets and monitoring service delivery; and

WHEREAS, the PBID Law requires that the City contract with the nonprofit corporation designated in the Management Plan, whereupon the Organization, as the FCTBID owner's association will be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all documents relating to activities of the FCTBID; and

WHEREAS, the parties desire that the Organization act as "Owner's Association" for the FCTBID, upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the above recitals and for other good and sufficient consideration, the City and Organization agree as follows:

AGREEMENT

1. Recitals. All the foregoing recitals are true and correct and incorporated herein by this reference as if fully set forth herein.

2. The Organization's Obligations.

(a) *Management Plan.* The Organization shall provide all the activities and any and all improvements described in the Management Plan and otherwise administer and implement the Management Plan.

(b) *Annual Reports.* The Organization shall submit annual reports to the City, as required of the "owners' association" pursuant to California Streets and Highway Code Section 36650, a copy of which is included in the Management Plan.

(c) *Budget Compliance.* The Organization shall administer FCTBID funds in compliance with the annual service plan budget contained in the Management Plan ("Budget"), which is incorporated herein. The Organization shall allocate funds received pursuant to this Agreement according to the Budget as they are received in the proportions stated in the Budget. By way of example, if the FCVB receives a \$100,000 payment pursuant to this Agreement, the FCVB shall allocate no more than 10% of the payment (\$10,000) to Administration costs, as provided in the Budget.

(d) *Delinquent Assessments.* The Organization, unless otherwise instructed by the City in writing, shall be responsible for collection of all delinquent FCTBID assessments and related penalties and interest ("Collection Efforts") pursuant to Streets & Highways Code Section 36631, and consistent with this Agreement, provided that: (i) litigation in the name of the City shall not be commenced without the express written consent of the City, and (ii) the Organization shall not send any delinquency notices to hotel operators, or any other correspondence in the name of, or on behalf of, the City, except as previously approved in writing by City. The City may, but is not obligated to, engage in Collection Efforts at its discretion. The Organization shall reimburse the City for costs and expenses incurred in Collection Efforts undertaken by the City at the request of the Organization (including, but not limited to, attorneys' fees and litigation expenses). The Organization shall reimburse the City, pursuant to this paragraph, within thirty (30) days of written demand by the City, unless deducted from City payments to the Organization pursuant to Section 3(b)(ii) of this Agreement.

(e) *Subcontracts and Procurement.* The Organization shall award and administer all subcontracts necessary for providing the activities and any and all improvements. For subcontracts of \$25,000 or more, utilize a fair and documented competitive process which

awards activities to the best value provider and awards improvements to the lowest price responsive and responsible bidder, by: (1) soliciting proposals (for activities) and bids (for improvements); (2) utilize a fair and documented competitive process which awards activities to the best value provider and awards improvements to the lowest price responsive and responsible bidder; (3) make a written "Bid Record" for bid awards, after the subcontract is awarded (the Bid Record must list the name and amount bid for each bidder and include the facts supporting the award of the subcontract to the successful bidder). For any subcontract, upon request, provide the City with a copy of the subcontract, documentation and the Bid Record as applicable. Notwithstanding the foregoing, and to the extent consistent with controlling law and regulations, the Organization shall seek participation in subcontracting and procurement from within the FCTBID boundaries to the extent feasible.

(f) *Compliance with Laws.* The Organization shall comply with all federal, state, and local laws, including The Ralph M. Brown Act (Government Code § 54950 et seq.) ("Brown Act") whenever matters within the subject matter of the FCTBID are heard, discussed, or deliberated, and the California Public Records Act (Government Code § 6250 et seq.) for all documents relating to activities of the FCTBID; the Organization shall ensure that its board members will undertake training on the Brown Act, which may consist of self-study materials, an online course, or in-person training; and secure all necessary permits and authorizations for work on public property or within public right-of-ways such as sidewalks, alleys, streets, pedestrian malls, public easements, public buildings, and public-parking areas.

(g) *Confidentiality.* The Organization shall comply with all laws governing the confidentiality of FCTBID assessment records, reports, and related information that may be provided to the Organization by the City ("Assessment Records"). The Organization shall only disclose Assessment Records as required by law, or as necessary to collect delinquent FCTBID assessments, consistent with applicable confidentiality laws.

(h) *Board Representation.* At all times during the term of this Agreement, the Mayor of the City of Fresno, California ("Fresno Mayor"), and the City Manager of the City of Clovis, California ("Clovis City Manager"), shall each have the right to hold a seat, or to designate any other individual to hold a seat, on the Organization's board of directors. If either the Fresno Mayor or the Clovis City Manager is denied the right provided in this paragraph, the City may terminate this Agreement immediately.

(i) *Indemnity.* The Organization shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Organization or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Organization's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the

willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

If Organization should subcontract all or any portion of the work to be performed under this Agreement, Organization shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This subsection shall survive termination or expiration of this Agreement.

(j) *Independent Contractor Status.* The Organization will perform under this Agreement as an independent contractor and will be responsible for any federal, state, or local taxes or fees that apply to payments it receives from the City under this Agreement. The Organization's employees and subcontractors will not be employees of the City and will not be eligible for any benefits provided through the City, including but not limited to social security, health, workers' compensation, unemployment compensation, and retirement benefits. Neither the Organization nor any of its officers, employees, agents, volunteers, or subcontractors are or will be considered to be agents of the City in connection with the Organization's performance under this Agreement.

(k) *Records/Audit.* During the term of this Agreement, and for four year after the term expires or terminates, the Organization agrees to maintain detailed records pertaining to FCTBID administration sufficient to provide the basis for an unqualified opinion by an independent auditor, including but not limited to records concerning budgeting, expenditures, subcontracts (e.g., Bid Records), insurance, permits, administrative expenses, and overhead. The Organization agrees to make all such records available to the City at all reasonable times. If the City requests, the Organization will obtain and provide to the City, at the Organization's sole cost, an independent financial audit of the Organization's use of FCTBID funds for any or all years of the FCTBID's operation.

(l) *Insurance.* The Organization shall comply with the insurance requirements provided in Exhibit B.

3. The City's Obligations.

(a) *Payments to the Organization.* The City shall pay to the Organization in trust:

(i) the FCTBID assessment funds actually collected by the City, with any interest that actually accrues upon such funds while in the City's possession and control;

(ii) interest and penalties actually received by the City with respect to delinquent FCTBID assessment payments; and

(iii) FCTBID assessment funds actually received by the City from the City of Clovis.

(b) *Deductions from Payment.* The City shall be entitled to retain the following amounts, which shall be deducted from the payment provided for in Section 3(a):

(i) one percent (1%) of FCTBID assessment funds collected by the City from hotel operators located within the City (but not within the City of Clovis), to cover administrative costs, as provided in the Management Plan; and

(ii) costs incurred by the City as a result of engaging in Collection Efforts consistent with Section 2(d) of this Agreement, including but not limited to collection agency fees.

(c) *City of Clovis Administrative Costs.* The parties acknowledge that, pursuant to the Management Plan, the City of Clovis is entitled to receive one percent (1%) of the TBID assessment funds collected from hotels operators within the City of Clovis, which the City of Clovis may deduct from TBID assessment funds forwarded to the City.

4. General Provisions.

(a) *FCTBID Funds held in Trust.* All FCTBID assessments and funds in the possession/control of the Organization hereunder are the property of the FCTBID and shall be held in trust by the Organization solely for the benefit of the FCTBID.

(b) *General Fund Not Liable.* Neither the taxing authority, nor the bonding capacity, nor the general fund, nor any other fund or monies of the City other than actual FCTBID revenues received from hotel operators or the City of Clovis will be liable for payment of any obligations arising from this Agreement. Those obligations are not a debt of the City, nor are they a legal or equitable pledge, charge, lien, or encumbrance upon any of the City's property, income, receipts, or revenues. This Agreement embodies all of the Organization's reimbursement rights, and the City is not required to execute any additional note or document.

(c) *Effective Date, Term, and Early Termination.* This Agreement becomes effective on the date first-above written upon its complete execution by the parties. The term of this Agreement begins on the effective date and ends at 11:59 p.m. on December 31, 2015.

(1) In addition to any other right of termination provided in this Agreement, the City may terminate this Agreement early if it determines that the Organization:

(i) Has misappropriated funds, committed malfeasance, or violated any law in providing the activities and improvements described in the Management Plan or in otherwise administering and implementing the Management Plan; or

(ii) Has materially breached this Agreement and has failed to cure the breach within 30 days after receiving the City's written demand for cure.

(2) Immediately following the termination or expiration of this Agreement, the Organization will do all of the following:

- (i) Terminate all of activities of the Organization on behalf of the FCTBID;
- (ii) Pay all obligations and administration costs it incurred on behalf of the FCTBID; and
- (iii) Return to the City all remaining FCTBID funds and all assets acquired with FCTBID funds, which the City will hold on behalf of the FCTBID.

(d) *Notices.* To be effective, any notice concerning this Agreement must be served by placing it in the U.S. Mail, addressed as set forth below, with postage prepaid (registered or certified mail, return receipt requested):

(1) If to the City:
City of Fresno
Office of the City Manager
2600 Fresno Street
Fresno, CA 93721

(2) If to the Organization:
Fresno Convention & Visitors Bureau
1550 E. Shaw Ave.
Suite. 101
Fresno, CA., 93710

A notice will be considered delivered two business days after the date of deposit in the U.S. Mail. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this subsection.

(e) *Attorneys' Fees.* The prevailing party in any litigation or arbitration brought to enforce this Agreement will be entitled to recover reasonable attorneys' fees and costs incurred in connection with the litigation or arbitration, through final resolution.

(f) *Interpretation and Venue.* This Agreement is to be interpreted in accordance with California law. Any litigation concerning this Agreement must be brought and prosecuted in the Fresno County Superior Court.

(g) *Waiver.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any term or provision in this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

(h) *Entire Agreement.* Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement sets forth the parties' entire

understanding regarding the subjects covered. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those subjects (whether written, oral, express, or implied) and may be modified only by another written agreement signed by both parties.

(i) *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.

(j) *Precedence of Documents.* In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment.

(k) *Amendment.* This Agreement may be modified only by written instrument duly authorized and executed by all the parties.

(l) *Conflict of Interest.* Organization shall comply, and require any of its subcontractors to comply, with all laws and regulations including, without limitation, conflict of interest laws, such as Government Code 1090 et. seq., the California Political Reform Act (Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Organization shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Organization and the respective subcontractor(s) are in full compliance with all laws and regulations. Organization shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Organization shall immediately notify City of these facts in writing.

(m) *Successors and Assigns.* Subject to limitations on assignment provided herein, this Agreement shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The Organization may not assign its rights or obligations under this Agreement without the prior written consent of City, which consent may be withheld at City's sole and absolute discretion. Any attempted assignment by Organization, its successors or assigns, shall be null and void unless approved in writing by the City.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first-above written.

CITY OF FRESNO,
a municipal corporation

By: Mark Scott

Name: Mark Scott

Title: City Manager

FRESNO CONVENTION & VISITORS
BUREAU, a nonprofit corporation

By: Layla Forstedt, CEO
Layla Forstedt, CEO

ATTEST:

REBECCA E. KLISCH

City Clerk

By: Stacy Woo 8-411
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ

City Attorney

By: Mark Gleason
Mark Gleason, Deputy

Attachments:

Exhibit A: Fresno-Clovis Tourism Business Improvement District Management District Plan

Exhibit B: Insurance Requirements

EXHIBIT A

Fresno-Clovis Tourism Business Improvement District Management District Plan

[See attached.]

FRESNO - CLOVIS TOURISM BUSINESS IMPROVEMENT DISTRICT

MANAGEMENT DISTRICT PLAN

*Formed pursuant to the Property and Business Improvement District Act of 1994
(Streets and Highways Code §36600 et seq.)*

Submitted to the

Fresno Convention and Visitors Bureau

December 7, 2010

by



FRESNO - CLOVIS TOURISM BUSINESS IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

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I. INTRODUCTION AND OVERVIEW

Developed by the Fresno Convention and Visitors Bureau (FCVB), the Fresno - Clovis Tourism Business Improvement District (FCTBID) is a benefit assessment district proposed to help fund marketing and sales promotion efforts for Fresno and Clovis lodging businesses. This approach has been used successfully in other destination areas throughout the country to improve tourism and drive additional room nights.

- Location:** The proposed FCTBID includes all lodging businesses (e.g. hotels, motels and inns) with more than twenty rooms located within the boundaries of the cities of Fresno and Clovis.
- Services:** Marketing and sales promotions to increase tourism and to market Fresno and Clovis as tourist, meeting and event destinations.
- Budget:** The total FCTBID annual budget for each year of its five year operation is anticipated to be approximately \$800,000.
- Cost:** Annual assessment rates are 1% of gross short term (stays less than 31 consecutive days) room rental revenue on lodging businesses. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days, nor on railroad crews, airline crews or tax-exempt government employees on government business. Assessments pursuant to the FCTBID shall not include room rental revenue resulting from stays booked pursuant to contracts executed prior to January 1, 2011. In the future, the owners' association may contract directly with hotels for airline crew stay related services if hotels desire to pay for, and the owners' association desires to provide, those services.
- Formation:** TBID formation requires submittal of petitions from lodging businesses representing more than 50% of the total annual assessment followed by a City Council hearing and an opportunity for a written protest. The assessed lodging business owners will receive notice of the public hearing by mail. If there is a majority written protest, no further proceedings to form the FCTBID may be taken for one year.
- Duration:** The proposed FCTBID will have a five year life. The FCTBID assessment will be implemented beginning January 1, 2011 or soon thereafter. Once per year beginning on the anniversary of the formation of the district there is a 30-day period in which owners paying more than 50% of the assessment may protest and terminate the district.

II. WHY A TOURISM BUSINESS IMPROVEMENT DISTRICT FOR FRESNO AND CLOVIS?

There are several reasons why now is the right time to form a TBID in Fresno and Clovis; the most compelling reasons are as follows:

1. The Need to Increase Occupancy

The formation of the FCTBID is a proactive effort to provide supplemental funding beyond that provided by the cities. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the conference segment of the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

2. An Opportunity for Increasing City Tax Revenues

As occupancy rates increase, so too will the cities' TOT revenue. With stable public/private funding for tourism marketing efforts, annual occupancy rates should increase significantly as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourist spending. This represents a substantial return to the cities. The formation of the FCTBID in partnership with the FCVB creates a stable funding source tied directly to tourism promotion.

3. Stable Funding for Tourism Promotion

The FCTBID will provide a stable source of funding for consistent tourism promotion efforts. The FCTBID will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.

III. WHAT IS A TOURISM BUSINESS IMPROVEMENT DISTRICT?

Tourism Business Improvement Districts (TBIDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TBIDs allow lodging and tourism-related business owners to organize their efforts to increase tourism. Tourism-related business owners within the district fund a TBID, and those funds are used to provide services that the businesses desire and that benefit the lodging businesses within the district.

Tourism Business Improvement District services may include, but are not limited to:

- Marketing of the Destination
- Tourism Promotion Activities
- Sales Lead Generation

In California, Tourism Business Improvement Districts are formed pursuant to the Property and Business Improvement District Law of 1994 (PBID Law). This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. *The key difference between TBIDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to Tourism Business Improvement Districts:

- Funds cannot be diverted for other government programs;
- Tourism Business Improvement Districts are customized to fit the needs of each tourism district;
- They allow for a wide range of services, including those listed above;
- Tourism Business Improvement Districts are *designed, created and governed by those who will pay* the assessment;
- They provide a stable funding source for tourism promotion.

The Property and Business Improvement District Law of 1994 is provided in Appendix 1 of this document.

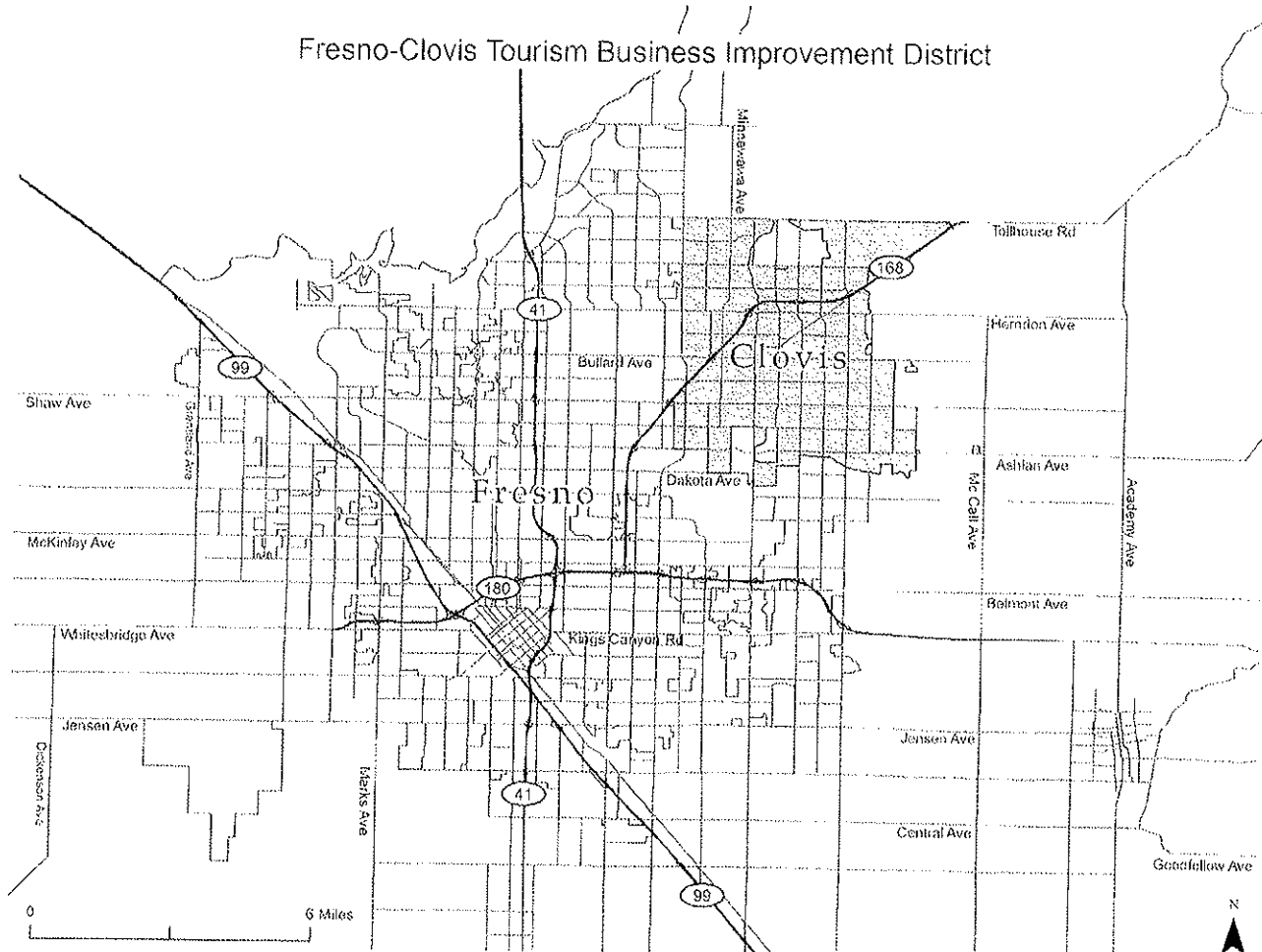
IV. FRESNO - CLOVIS TBID BOUNDARY

A. Assessed Businesses

The FCTBID will include all lodging businesses with more than twenty rooms, existing and in the future, available for public occupancy within the boundaries of the cities of Fresno and Clovis. New lodging businesses with more than 20 rooms opening during the term of the district, and lodging businesses expanding to more than 20 rooms during the term of the district, will be assessed upon their expansion or opening. Lodging businesses with more than 20 rooms which reduce the number of rooms to twenty or less during the term of the district will cease to be assessed upon reduction of rooms to twenty or less.

B. Number of Businesses

The boundary currently includes 87 lodging businesses. Please see the map below. A complete listing of lodging businesses within the proposed FCTBID can be found on Appendix 2 of this Plan.



V. SERVICE PLAN AND BUDGET

A. Assessment

The FCTBID annual assessment rate is 1% of gross short term (stays less than 31 consecutive days) room rental revenue per night for lodging businesses. Based on the benefit received assessments will not be collected on stays of more than thirty (30) consecutive days, nor on railroad crews, airline crews or tax-exempt government employees on government business. Assessments pursuant to the FCTBID shall not include room rental revenue resulting from stays booked or pursuant to contracts executed prior to January 1, 2011. In the future, the owners' association may contract directly with hotels for airline crew stay related services if hotels desire to pay for, and the owners' association desires to provide, those services.

The term "gross revenue" as used herein includes the following: (1) Any charge for a room, whether the guest uses the room or not; (2) Any charge for additional guests in a room; and (3) Any fee for guaranteeing the availability of a room, whether or not that room is occupied. Gross revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes. Any other charges shall be considered gross revenue only in accordance with the local transient occupancy tax.

Bonds shall not be issued.

Assessed lodging businesses have the option of passing the assessment on to guests. Any assessment charge passed on must be disclosed to the guest in advance. If the assessment is passed on to the guest it shall be identified as "Tourism assessment" and be separated from rent and other applicable taxes and fees.

B. Determination of Special Benefit

State law provides that the expenses of the district shall be apportioned in proportion to the benefit received by assessed businesses.

A special benefit is defined as a particular and distinct benefit over and above general benefits conferred on the public at large. Conversely, a general benefit is a benefit to businesses in the surrounding community or a benefit to the public in general resulting from the improvement, activity or service to be provided by the assessment levied. Many general benefits to the public at large are conveyed by municipal services, such as fire protection, police services and public transit services. These services are targeted to serve the public at large and do not confer special benefits on particular businesses.

The services in this Management District Plan are designed to provide targeted services to lodging businesses. These services are tailored not to serve the general public, but rather to serve the specific lodging businesses within the FCTBID, e.g., the proposed activities are specifically targeted to increase room nights for assessed lodging businesses within the boundaries of the FCTBID, and are narrowly tailored. FCTBID funds will be used exclusively to benefit the assesseses.

The activities paid for from assessment revenues are lodging business services creating special benefit to those businesses. In addition, these activities are not for the benefit of the general public and do not provide general benefit as defined above. All general benefits (if any) to the surrounding community and general public are intangible and unquantifiable. It is appropriate that these special business-related benefits be funded through business assessments.

C. Time and Manner for Collecting Assessments

The FCTBID assessment will be implemented beginning January 1, 2011 or soon thereafter and will continue for five years. Each city will be responsible for collecting the assessment no less than quarterly (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the respective city, and forwarding the amount collected to the City of Fresno on a monthly basis. Each city shall take all reasonable efforts to collect, or cause to be collected, the assessments from each lodging business located within its boundaries, including the collection of delinquent assessments. However, in no event shall either city be liable for its failure to collect delinquent assessments. Each city shall be reimbursed, or otherwise made whole, for the cost of collecting delinquent assessments, as provided in the contract with the FCVB to be executed pursuant to Streets and Highways Code §36651 (the "Owners' Association Management Contract").

The City of Fresno shall forward the assessment funds actually collected and received by the City of Fresno to the Fresno Convention and Visitors Bureau (FCVB) which will have the responsibility of managing TBID programs as provided in this Management District Plan and the Owners' Association Management Contract.

D. Service Plan Budget Summary

A summary of the annual service plan budget for the FCTBID is provided on the following pages. The total five year improvement and service plan budget is projected at approximately \$800,000 annually, or \$4,000,000 through 2015.

E. Annual Service Plan

A service plan budget has been developed to deliver services throughout the FCTBID. An annual service plan and budget will be developed and approved by the FCVB Board. Please see the budget exhibit below. The budget also includes a portion for contingencies and renewal of the FCTBID. Should the FCVB Board approve, funds may be appropriated for the renewal effort. If there are funds remaining at the end of the FCTBID term and lodging businesses choose to renew, these remaining funds could be transferred to the renewed FCTBID. If there are funds remaining at the end of the FCTBID term and lodging businesses choose not to renew, any remaining funds will be spent consistent with this Plan or returned to assessed businesses in equal proportions to the assessment paid by each business.

**Fresno - Clovis Tourism Business Improvement District
Annual Budget, Years One through Five**

Category	Percent of Budget	Dollar Amount
Sales and Marketing	84%	\$672,000
Administration	10%	\$80,000
City Collection Costs	1%	\$8,000
Contingency/Renewal	5%	\$40,000
Total Annual Budget	100%	\$800,000

Sales and Marketing

A sales and marketing program will promote Fresno and Clovis as tourist, meeting and event destinations. The sales and marketing program will have a central theme of promoting Fresno and Clovis as desirable places to visit, and may include but is not limited to the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence;
- Print ads in magazines and newspapers targeted at potential visitors;
- Television ads targeted at potential visitors;
- Radio ads targeted at potential visitors;
- Attendance of trade shows;
- Sales blitzes;
- Sporting events;
- Familiarization tours;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps;
- Attendance of professional industry conferences and affiliation events;
- Lead generation activities designed to attract tourists and group events to Fresno and Clovis;
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts;
- Education of hospitality staff on service and safety (related to alcohol and food) designed to create a visitor experience that will bring repeat visits; and
- Education of lodging business management and the owners' association on marketing strategies best suited to meet Fresno and Clovis' needs.

Administration and Operations

The administrative and operations portion of the budget shall be utilized for staffing costs, office costs, insurance costs, legal and accounting costs, the cost of reimbursing cities for the cost of collecting delinquent assessments, and other general administrative costs.

City Administration Fee

Each city shall be paid a fee equal to 1% of the amount of assessment collected to cover the costs of collection and administration, exclusive of the cost of collecting delinquent assessments.

Contingency/Renewal

A prudent portion of the budget will be set aside in a contingency fund, to be used for unforeseeable costs in carrying out the sales and marketing programs, or in the event revenue collected is less than projected. If at the expiration of the district there are contingency funds remaining, and business owners wish to renew the district, the remaining contingency funds may be used for renewal costs.

F. Adjustments

The marketing plan shall remain consistent with the budget herein. Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the FCVB board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) per year.

VI. BID GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the owners' association of the FCTBID as defined in Streets and Highways Code §36614.5. The FCVB will serve as the owners' association for the FCTBID and shall contract with the City of Fresno to provide services to the FCTBID, as provided in Streets and Highways Code §36651.

B. Brown Act and California Public Records Act Compliance

Pursuant to Streets and Highways Code §36614.5, the owners' association is subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act, designed to promote public accountability. The owners' association of a TBID is considered a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the FCVB board must be held in compliance with the public notice and other requirements of the Brown Act. The owners' association is also subject to the record keeping requirements of the California Public Records Act.

C. Annual Report

The FCVB board shall present an annual report at the end of each year of operation to the Fresno City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). A copy of the annual report will also be submitted to the City of Clovis.

APPENDIX 1 – THE PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994 STREETS AND HIGHWAYS CODE Division 18. Parking

*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, ***
AND 7, AND URGENCY LEGISLATION THROUGH CH 4 OF THE 2010 REGULAR SESSION

§ 36600. Citation of part

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

§ 36601. Legislative findings and declarations

The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

§ 36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within a business improvement area. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

§ 36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

§ 36603.5. Part prevails over conflicting provisions

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

§ 36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

§ 36605. [Section repealed 2001.]

§ 36606. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

§ 36607. "Business"

"Business" means all types of businesses and includes financial institutions and professions.

§ 36608. "City"

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with *Section 6500*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*, the public member agencies of which includes only cities, counties, or a city and county.

§ 36609. "City council"

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

§ 36610. "Improvement"

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

§ 36611. "Property and business improvement district"; "District"

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

§ 36612. "Property"

"Property" means real property situated within a district.

§ 36613. "Activities"

"Activities" means, but is not limited to, all of the following:

- (a) Promotion of public events which benefit businesses or real property in the district.

- (b) Furnishing of music in any public place within the district.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Activities which benefit businesses and real property located in the district.

§ 36614. "Management district plan"; "Plan"

"Management district plan" or "plan" means a proposal as defined in Section 36622.

§ 36614.5. "Owners' association"

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with *Section 54950*) of *Part 1 of Division 2 of Title 5 of the Government Code*), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with *Section 6250*) of *Division 7 of Title 1 of the Government Code*), for all documents relating to activities of the district.

§ 36615. "Property owner"; "Owner"

"Property owner" or "owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. The city council has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this subdivision requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient.

§ 36616. "Tenant"

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

§ 36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

§ 36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

§ 36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

§ 36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

- (1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or

businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

§ 36622. Contents of management district plan

The management district plan shall contain all of the following:

(a) A map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements and activities proposed for each year of operation of the district and the maximum cost thereof.

(e) The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance. The plan may provide that all or any class or category of real property which is exempt by law from real property taxation may nevertheless be included within the boundaries of the district but shall not be subject to assessment on real property.

(l) Any other item or matter required to be incorporated therein by the city council.

§ 36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with *Section 53753 of the Government Code*.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with *Section 54954.6 of the Government Code*, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners of businesses in the proposed district which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

§ 36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

§ 36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties or businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

§ 36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

§ 36626.5. [Section repealed 1999.]

§ 36626.6. [Section repealed 1999.]

§ 36626.7. [Section repealed 1999.]

§ 36627. Notice and assessment diagram

Following adoption of the resolution establishing the district pursuant to Section 36625 or 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. If the assessment is levied on businesses, the text of the recorded notice shall be modified to reflect that the assessment will be levied on businesses, or specified categories of businesses, within the area of the district. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

§ 36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

§ 36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

§ 36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

§ 36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and a new district established pursuant to this part.

§ 36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution establishing the management district plan described in Section 36622. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

§ 36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

§ 36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

§ 36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

§ 36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

§ 36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention; Modification of improvements and activities by adoption of resolution after public hearing

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public meetings and public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public meeting.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public meeting, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

§ 36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

§ 36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with *Section 6584*) of *Chapter 5* of *Division 7*

of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

§ 36641. [Section repealed 2001.]

§ 36642. [Section repealed 2001.]

§ 36643. [Section repealed 2001.]

§ 36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

§ 36651. Designation of owners' association to provide improvements and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements or activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

§ 36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.

(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.

(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

§ 36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:

(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assessee may request disestablishment of the district. The first such period shall begin one year

after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property or of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.

(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

§ 36671. Refund of remaining revenues upon disestablishment of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – LODGING BUSINESSES TO BE ASSESSED WITHIN THE FCTBID

Lodging Business	Address
Ambassador Inn & Suites	1804 W. Olive Avenue Fresno,CA 93728
America's Best Value Inn D/T	2425 Merced St. Fresno,CA 93721
America's Best Value Water Tree Inn	4141 N. Blackstone Ave. Fresno,CA 93726
Astro Motel	3393 N. Parkway Dr. Fresno, CA 93722
Best Budget Inn	7117 N. Blackstone Avenue Fresno,CA 93650
Best Western Fresno Inn	480 E. Shaw Ave. Fresno,CA 93710
Best Western Village Inn	3110 North Blackstone Ave. Fresno,CA 93703
Big Star Motel	2325 S. G St. Fresno, CA 93721
Comfort Inn	5455 W. Shaw Ave. Fresno,CA 93711
Comfort Suites	102 East Herndon Fresno,CA 93720
Country Inn & Suites	6065 N. Thesta Fresno,CA 93710
Courtyard by Marriott-Airport	1551 N. Peach Fresno,CA 93727
Courtyard by Marriott-Shaw	140 E. Shaw Ave. Fresno,CA 93710
Crosslands	3460 W. Shaw Ave. Fresno,CA 93711
Days Inn	4061 N. Blackstone Ave. Fresno,CA 93726
Days Inn Fresno	1101 N. Parkway Dr. Fresno, CA 93728
Day's Inn Highway 99	2640 South Second Street Fresno,CA 93706
Econo Inn	1820 Broadway Fresno,CA 93721
Econo Lodge - North Blackstone	6309 N. Blackstone Ave. Fresno,CA 93710
Econo Lodge-Parkway	445 N. Parkway Drive Fresno,CA 93706
Economy Inn	4290 N Blackstone Ave. Fresno, CA 93726
Extended Stay America	7135 N. Fresno St. Fresno,CA 93720
Flamingo Inn	1487 N Golden State Blvd. Fresno, CA 93728
Four Points by Sheraton	3737 N. Blackstone Ave. Fresno,CA 93726
Fresno Inn	2345 N. Parkway Fresno,CA 93705
Fresno Motel	1325 N. Golden State Blvd. Fresno, CA 93728
Fresno Motor Lodge Motel	1587 N. Golden State Blvd. Fresno, CA 93728
Gables Motel	2833 E. Church Ave. Fresno, CA 93706
Garden Inn & Suites	4949 N. Forestiere Avenue Fresno,CA 93722
Hampton Inn & Suites Fresno	327 E. Fir Avenue Fresno,CA 93720
Holiday Inn Downtown	1055 Van Ness Avenue Fresno,CA 93721
Holiday Inn Express	7191 W. Kathryn Fresno,CA 93722
Holiday Inn Express Fresno/South	2660 South Second Street Fresno,CA 93706
Holiday Inn Express/Riverpark	7115 N. Howard St. Fresno,CA 93720
Holiday Inn Fresno Airport	5090 E. Clinton Way Fresno,CA 93727
Holiday Motel	1407 N. Goldeb State Blvd. Fresno, CA 93728
Homewood Suites	6820 N Fresno Street Fresno,CA 93710

Kings Canyon Motel	4770 E. Kings Canyon Rd. Fresno,CA 93702
Knight's Inn	6090 N. Blackstone Avenue Fresno,CA 93710
La Quinta Inn & Suites	5077 N. Cornelia Ave. Fresno,CA 93722
La Quinta Inn (Riverpark)	330 E. Fir Avenue Fresno,CA 93720
La Quinta Inn, Fresno D/T	2926 Tulare Street Fresno,CA 93721
Manchester Motel	3844 N. Blackstone Ave. Fresno, CA 93726
Motel 6	4245 N. Blackstone Avenue Fresno,CA 93726
Motel 6	4080 N. Blackstone Avenue Fresno,CA 93726
Motel 6	1240 N. Crystal Avenue Fresno,CA 93728
Motel 6	5021 N. Barcus Fresno,CA 93722
Palace Inn	797 N. Parkway Dr. Fresno, CA 93728
Parkland Hotel	3095 N. Parkway Drive Fresno,CA 93722
Parkside Inn	1415 W. Olive Ave. Fresno,CA 93728
Piccadilly Inn Express	5113 E. McKinley Avenue Fresno,CA 93727
Piccadilly Inn-Airport	5115 E. McKinley Avenue Fresno,CA 93727
Piccadilly Inn-Shaw	2305 W. Shaw Avenue Fresno,CA 93711
Piccadilly Inn-University	4961 N. Cedar Avenue Fresno,CA 93726
Plaza Motel	1940 Broadway Fresno,CA 93721
Quality Inn/Ashlan	4278 W. Ashlan Avenue Fresno,CA 93722
Radisson Hotel & Conference Center	2233 Ventura Street Fresno,CA 93721
Ramada South	5046 N. Barcus Fresno,CA 93722
Ramada University	324 E. Shaw Avenue Fresno,CA 93710
Residence Inn by Marriott	5322 N. Diana Avenue Fresno,CA 93710
Rodeway Inn	6730 N. Blackstone Avenue Fresno,CA 93710
Royal Motel	3391 N. Parkway Drive Fresno, CA 93722
Sands Motel	1441 N. Golden State Blvd. Fresno, CA 93728
San Joaquin Suites	1309 W. Shaw Avenue Fresno,CA 93711
Sequoia Motel	4707 E. Kings Canyon Rd. Fresno,CA 93702
Sierra Inn	949 N. Parkway Drive Fresno, CA 93728
Springhill Suites by Marriott	6844 N. Fresno St. Fresno,CA 93710
Starlite Inn	3335 N. Parkway Drive Fresno, CA 93722
Super 8 Motel	2127 Inyo Street Fresno,CA 93721
Super 8 Motel - North	6051 N. Thesta Avenue Fresno,CA 93710
Super 8 Motel - Parkway	1087 Parkway Drive Fresno,CA 93728
Towne Place Suites	7127 N. Fresno St. Fresno,CA 93720
Town House Motor Hotel	1383 N. Motel Drive Fresno, CA 93728
Travelodge-Blackstone	3876 N. Blackstone Ave. Fresno,CA 93726
University Inn	2655 E. Shaw Avenue Fresno,CA 93710
Vagabond Inn	2570 S. East Avenue Fresno,CA 93706
Valley Inn	933 N. Parkway Drive Fresno,CA 93728
Villa Motel	817 N. Parkway Drive Fresno, CA 93728
Welcome Inn	777 N. Parkway Drive Fresno,CA 93728

Americas Best Value Inn-Clovis (formerly Rodeo Lodge)	1616 Clovis Avenue Clovis,CA 93612
Best Western Clovis Cole	415 Clovis Avenue Clovis, CA 93612
Comfort Suites Clovis	143 Clovis Avenue Clovis,CA 93612
Fairfield Inn by Marriott	50 N. Clovis Avenue Clovis,CA 93612
Hampton Inn & Suites	855 W. Gettysburg Avenue Clovis,CA 93612
Hilton Garden Inn	520 W. Shaw Avenue Clovis,CA 93612
Holiday Inn Express	650 W. Shaw Avenue Clovis,CA 93612
Homewood Suites/Clovis	835 W. Gettysburg Avenue Clovis,CA 93612

EXHIBIT B

Insurance Requirements

Throughout the life of this Agreement, Organization shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$2,000,000 general aggregate

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

Defense costs shall be provided as an additional benefit and not included within the above limits of liability. In the event Organization purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Organization shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Organization shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Organization shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Organization shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Organization shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Organization's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Organization shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.** Upon request of City, Organization shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, Organization or any of its contractors or subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Organization of its responsibilities under this Agreement.

The fact that insurance is obtained by Organization shall not be deemed to release or diminish the liability of Organization, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Organization. Approval or purchase of any insurance Agreements or policies shall in no way relieve from liability nor limit the liability of Organization, its board, officers, employees, agents, volunteers, persons under the

supervision of Organization, vendors, suppliers, invitees, consultants, sub-consultants, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

If Organization should contract or subcontract all or any portion of the services to be performed under this Agreement, Organization shall require each contractor or subcontractor to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the contractor's or subcontractor's certificates and endorsements shall be on file with Organization and City prior to the commencement of any work by the contractor or subcontractor.

AGENDA ITEM NO. 1E
COUNCIL MEETING 6/16/11
APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER 

June 23, 2011

FROM: MARK SCOTT, City Manager

BY NICOLE R. ZIEBA, Deputy City Manager 

SUBJECT: APPROVE AGREEMENT BETWEEN THE CITY OF FRESNO AND FRESNO CONVENTION & VISITOR'S BUREAU FOR IMPLEMENTATION OF THE TOURISM BUSINESS IMPROVEMENT DISTRICT MANAGEMENT DISTRICT PLAN

Presented to City Council

Date 6/16/11

Disposition Approved

RECOMMENDATION

Staff recommends approval of the Agreement between the City and the Fresno Convention & Visitor's Bureau (CVB) for implementation of the Tourism Business Improvement District (TBID) Management District Plan

EXECUTIVE SUMMARY

The City is required to collect funds from hoteliers for the TBID. The adopted TBID Plan requires a formal agreement between the City and the "TBID Owner's Association", which is the CVB, to outline conditions under which those funds are collected and disbursed. The attached agreement satisfies the Management Plan requirement for such an agreement.

BACKGROUND

On May 12, 2011, the City Council approved a temporary Memorandum of Understanding with the CVB that allowed the City to disburse funds collected from hoteliers for the TBID. The TBID Management District Plan requires a formal agreement between the City and the "TBID Owner's Association", which is the CVB, that outlines conditions under which funds may be disbursed and how they are to be used. The temporary MOU called for the formal agreement to be negotiated and brought back to Council for approval in June. The attached Agreement was approved and signed by the CVB and is ready for immediate implementation upon approval by Council.

FISCAL IMPACT

There is no fiscal impact associated with approval of the Agreement for implementation of the TBID Management District Plan.

Attachment: Agreement Between the City of Fresno and the Fresno Convention & Visitor's Bureau for implementation of the Tourism Business Improvement District Management District Plan